

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Requests for Waiver by

Amy Biehl Charter High School

Albuquerque, New Mexico

Weld Library District

Greely, Colorado

Schools and Libraries Universal Service
Support Mechanism

CC Docket No. 02-6

ORDER

Adopted: October 20, 2009

Released: October 20, 2009

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we deny two requests for waivers filed by Amy Biehl Charter High School (Amy Biehl) and Weld Library District (Weld) of the Commission's competitive bidding rules for the schools and libraries universal service mechanism, also known as the E-rate program.¹ As explained below, we find that no special circumstances exist to justify grant of these waivers.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² In accordance with the Commission's rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.³ The FCC Form 470 must be posted on USAC's website for at least 28 days before the applicant may enter into an agreement for E-rate services.⁴ The applicant must then comply with the Commission's competitive bidding requirements set forth in sections 54.504 and 54.511(a) of the

¹ Amy Biehl Charter High School, Albuquerque, New Mexico, Request for Waiver of Form 470, CC Docket No. 02-6 (filed Dec. 21, 2005) (Amy Biehl Request for Waiver); Weld Library District, Greely, Colorado, Request for Waiver 06-07 Funding Year, CC Docket Nos. 96-45 and 02-6 (filed May 9, 2006) (Weld Request for Waiver).

² 47 C.F.R. §§ 54.501-54.503.

³ 47 C.F.R. § 54.504(b).

⁴ 47 C.F.R. § 54.504(b)(4).

Commission's rules.⁵ After entering into an agreement for eligible services, the applicant files the FCC Form 471 requesting discounts for the eligible services.⁶

3. Requests for Waiver. The Commission has under consideration two requests for waiver. The first request for waiver, filed by Amy Biehl, seeks a waiver of the competitive bidding rules requiring the filing of an FCC Form 470 prior to entering into an agreement for services.⁷ In January 2006, Amy Biehl moved to a new building and solicited bids from three companies, as required by state contracting law.⁸ Amy Biehl selected the lowest priced bid and signed a contract for services through December 2008 without first filing an FCC Form 470.⁹ It filed with the Commission a request for waiver of the requirement to file a completed FCC Form 470 prior to filing an FCC Form 471.¹⁰ Amy Biehl argues that the timing of the move gave it a limited window to solicit and receive bids for phone and Internet providers, and that it would be left with no service if it had to file an FCC Form 470 prior to entering into agreements with service providers.¹¹ Amy Biehl requests that the FCC Form 470 requirement be waived for the remainder of its contract.¹² Amy Biehl notes that it would otherwise qualify for a 50 percent discount, so that, absent a waiver, the school will have to pay an additional \$3,900 a year for the subsequent three years, for a total of \$11,700.¹³

4. The second request for waiver, filed by Weld, seeks a waiver of all E-rate deadlines to allow Weld to apply for E-rate funding year 2006 support.¹⁴ In the fall of 2005, Weld hired a new information technology manager who was unfamiliar with the E-rate program.¹⁵ During that time the position of state E-rate coordinator for library systems in Colorado was unstaffed.¹⁶ As a result, Weld's information technology manager was unaware of the E-rate application schedule for E-rate funding year 2006.¹⁷ Weld requests that the Commission waive all deadlines and allow it to apply for E-rate funding year 2006 support.¹⁸

⁵ 47 C.F.R. §§ 54.504, 54.511(a).

⁶ FCC Form 471 contains the discount calculation worksheet and the discount funding request. FCC Form 471 must be filed each time a school or library orders telecommunications services, Internet access, or internal connection services. See 47 C.F.R. § 54.504; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004).

⁷ Amy Biehl Request for Waiver at 1; 47 C.F.R. § 54.504(b).

⁸ Amy Biehl Request for Waiver at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Weld Request for Waiver at 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

III. DISCUSSION

5. We find that neither Amy Biehl nor Weld has provided sufficient evidence to warrant waivers of the competitive bidding rules.¹⁹ Neither the school or library took any reasonable steps to attempt to comply with the Commission's competitive bidding rules. In this case, both Amy Biehl and Weld failed to file an FCC Form 470. The FCC Form 470 is the document that initiates the competitive bidding process, which is the root of the E-rate support mechanism and is used to ensure that applicants comply with the Commission's competitive bidding rules.²⁰ In addition, the FCC Form 470 is used to certify, among other things, that the applicant meets the statutory definition and requirements for E-rate eligibility and that the services purchased will be used solely for educational purposes.²¹ Accordingly, we decline to waive the rules to allow Amy Biehl to file an FCC Form 471 and receive support without first having filed an FCC Form 470. We also deny Weld's request that we waive all relevant E-rate deadlines so that Weld can apply for support in E-rate funding year 2006. Amy Biehl and Weld remain eligible to apply for support from the schools and libraries mechanism in future funding years.

III. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the requests for waivers filed by Amy Biehl Charter High School, Albuquerque, New Mexico, and Weld Library District, Greeley, Colorado, ARE DENIED.

7. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁹ The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166. *Accord, NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008)(stating that in addition to the public interest being well-served, there must also be a sufficiently "unique situation" to grant waiver).

²⁰ 47 U.S.C. § 54.504(b); *see also Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al.*, SLD No. 321479, *et al.*, CC Docket Nos. 96-46 and 97-21, Order, 18 FCC Rcd 26,407 (2003) (affirming the competitive bidding process as the foundation upon which the Commission's rules and orders are based).

²¹ 47 U.S.C. § 54.504(b)(2).